

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

THE UNITED STATES OF AMERICA

vs.

CASE NO. 3:99-CR-186-02 (JAF)

JAVIER NIEVES-ALVAREZ

**MOTION NOTIFYING VIOLATION TO THE SUPERVISION CONDITIONS AND
REQUESTING THE ISSUANCE OF A SUMMONS**

**TO THE HONORABLE JOSE A. FUSTE
CHIEF UNITED STATES DISTRICT JUDGE
DISTRICT OF PUERTO RICO**

COMES NOW, ABNER VALCARCEL-MATOS, U.S. PROBATION OFFICER of this Honorable Court, presenting an official report upon the conduct and attitude of the offender, Javier Nieves-Alvarez, who on June 25, 2002, was sentenced to forty-eight (48) months of imprisonment after he pled guilty of violating Title 21 U.S. Code, § 846. A five (5) year supervised release term and a special monetary assessment in the amount of \$100.00 were also imposed. As special conditions, the offender was ordered to submit to urinalyses, participate in a substance abuse treatment program, if necessary, provide access to financial information upon request and submit evidence of income tax returns filing. The offender was released from custody on January 5, 2003.

**RESPECTFULLY PRESENTING PETITION FOR ACTION OF COURT FOR CAUSE AS
FOLLOWS:**

Since his release from custody, the offender has violated the following conditions of his supervised released term:

**1. GENERAL CONDITION- "WHILE ON SUPERVISED RELEASE, THE DEFENDANT
SHALL NOT COMMIT ANOTHER FEDERAL, STATE, OR LOCAL CRIME."**

On February 1, 2007, the offender was charged in Fajardo, Puerto Rico, with violation of Articles 3.1 and 3.3 of the Puerto Rico Law 54 of Domestic Violence. A preliminary hearing was

held on March 27, 2007, before Honorable Iris L. Cancio-Gonzalez, during which time probable cause was found on the Article 3.1. On the Article 3.3, no probable cause was found. However, the government would appeal the decision to be part of the trial for the Article 3.1. Trial was originally scheduled for May 15, 2007.

Finally, on August 21, 2007, trial was held before Honorable María Inés Cartagena-Colón, during which time the offender was found not guilty of violating Article 3.1 of the Puerto Rico Law 54, Domestic Violence. The Article 3.3 was dismissed pursuant to local rule 64 (P), the offender was charged of a violation of law without probable cause being determined by a magistrate or without being ordered to be detained to respond for such violation.

Moreover, on November 7, 2005, the offender was charged in Carolina with violation of Article 201 of the Puerto Rico Penal Code (receiving, disposal, and transportation of a property that has been object of a felony) and Article 10.16 (N) of the Puerto Rico Transit Law (use of a motorcycle known as Four Track in a public way without authorization of the Puerto Rico Secretary of Transportation). A preliminary hearing was held on February 2, 2006, before Honorable Cesar Almodóvar-Marchany, during which time probable cause was found. After several suspensions during the course of one (1) and a half year, trial was finally held on June 18, 2007. The offender was sentenced to misdemeanor charges and ordered to pay a fine in the amount of \$500 which he already satisfied.

2. STANDARD CONDITION NO. 6- “THE DEFENDANT SHALL NOTIFY THE PROBATION OFFICER AT LEAST TEN (10) DAYS PRIOR TO ANY CHANGE IN RESIDENCE.”

The offender failed to notify that he had moved to his mother’s residence in Río Grande as required.

3. STANDARD CONDITION NO. 11- “THE DEFENDANT SHALL NOTIFY THE PROBATION OFFICER WITHIN SEVENTY-TWO (72) HOURS OF BEING ARRESTED OR QUESTIONED BY A LAW ENFORCEMENT OFFICER”.

Mr. Nieves-Alvarez failed to notify that he was charged on March 7, 2005, with violation of the Article 4B of the Puerto Rico Law 253 of Compulsory Responsibility Insurance for Motor Vehicles. On April 11, 2005, the offender attended a hearing in Fajardo before the Honorable Yasmín Irizarry-Pietri. After obtaining and carefully reviewing the court documents, it was noted that the case was dismissed pursuant to Rule 247-A of the Commonwealth of Puerto Rico of Criminal Procedures, dismissed upon the court petition.

WHEREFORE, I declare under penalty and perjury that the foregoing is true and correct. In view of the above, it is respectfully requested that a summons be issued so that he may appear before this Court to show cause why his supervision term should not be revoked. Thereupon, that he to be dealt with pursuant to law.

In San Juan, Puerto Rico, this 15th day of October 2007.

Respectfully submitted,

EUSTAQUIO BABILONIA, CHIEF
U.S. PROBATION OFFICER

s/Abner Valcarcel
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CERTIFICATE OF SERVICE

I HEREBY certify that on October 15, 2007, I electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Edwin O. Vázquez-Berríos, Assistant U.S. Attorney and Mariangela Tirado-Valdés, Esq.

In San Juan, Puerto Rico, this 15th day of October 2007.

s/ Abner Valcarcel
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